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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 3722**
Helmut FITZ : Attorney Docket No. 2004_0121A
Serial No. 10/766,478 : Group Art Unit 3637
Filed January 29, 2004 : Examiner Hanh Van Tran
DRAWER : **Mail Stop: AF**

REPLY TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the second Notification of Non-Compliant Appeal Brief issued September 7, 2007 in connection with the appeal in the above-referenced US patent application, submitted herewith is a newly revised Appeal Brief which addresses all of the issues raised in the Notification.

Respectfully submitted,

Helmut FITZ

By: 

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September 13, 2007



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of : **Confirmation No. 3722**
Helmut FITZ : Attorney Docket No. 2004_0121A
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APPEAL BRIEF FILED UNDER 37 CFR § 41.37

Assistant Commissioner for Patents,

Sir:

The following is the Appellant's Brief, submitted in accordance with the provisions of 37 CFR 41.37.

Real Party in Interest

The real party in interest is Julius Blum Gesellschaft mbH, the assignee of the present application.

Related Appeals and Interferences

There are no known related appeals, interferences, or judicial proceedings.

Status of Claims

Claims 1-26 have been cancelled. Claims 27-52 were submitted in an Amendment filed March 27, 2006, and those claims are currently pending. In a final Office Action dated June 15, 2006, the Examiner rejected claims 27-34 and 40-50 in view of the prior art, and rejected dependent claim 35 on formal grounds. The Examiner also indicated that dependent claims 36-39 contain allowable subject matter, and allowed claims 51 and 52. Subsequently, a first Notice

of Appeal was filed July 27, 2006, and the required Appeal Brief was filed September 27, 2006. Upon consideration of that Appeal Brief, the Examiner issued a new final Office Action dated December 18, 2006, setting forth new prior art rejections of claims 27-34 and 40-50, again rejecting claim 35 on formal grounds, and again indicating that claims 36-39, 51, and 52 contain allowable subject matter. Thus, claims 36-39, 51, and 52 are not involved in this second appeal. As a result, in view of the above explanation and as noted in the attached Claims Appendix, **the appealed claims are 27-35 and 40-50.** A complete copy of all of the claims involved in this appeal is provided in the attached Claims Appendix.

Status of Amendments

No amendments subsequent to the final Office Action of December 18, 2006 have been submitted.

Summary of the Claimed Subject Matter

A description of the subject matter recited in the rejected claims will be provided below with reference to the written description and drawings of this Application. In this regard, the cited portions of the written description refer to the substitute specification filed March 27, 2006.

The present invention is generally directed to a drawer for use in a corner of, for example, a set of kitchen cabinets, as illustrated in Figure 1 (see page 1, lines 5-7 of the substitute specification). In particular, as recited in independent claim 27, the drawer 1 comprises two drawer frame members 2,2, a rear wall 5 attached to the drawer frame members 2,2, and a drawer bottom 3 between the drawer frame members 2,2 (see page 2, lines 18-24 of the specification and Figures 3 and 4). As further recited in independent claim 27, the drawer also comprises a front facing panel 4 adjustably attached to the drawer frame members 2,2 (see page 2, lines 25-32 of the specification). The front facing panel 4 includes at least two panel portions 7,7 adjustable relative to one another, and the panel portions 7,7 are arranged so that the front facing panel is angled inwardly (see page 3, lines 17-25 of the specification and Figures 3-5). The inwardly-angled panel portions 7,7 of the front facing panel 4 provide efficient use of space (see page 2, lines 20-24). Furthermore, the adjustability of the panel portions allows gaps to be adjusted to thereby prevent jamming of the drawers (see page 3, lines 17-25).

As recited in dependent claim 29, the panel portions 7,7 are adjustable in the horizontal direction relative to the drawer frame members 2,2 (see page 2, lines 28-32; page 3, line 23 through page 4, line 7; and Figures 9-11). Furthermore, as recited in dependent claim 30, the panel portions 7,7 are adjustable in the horizontal direction relative to each other (see page 2, lines 28-32; page 3, lines 23-25; and Figures 9-11). Because the panel portions 7,7 are adjustable relative to one another, horizontal gaps between the drawers 1 can be precisely adjusted (see page 3, lines 21-22 and Figure 1). Therefore, jamming of the panel portion by front plates of adjacent drawers when the corner drawer is pulled outward can be prevented.

As further recited in dependent claims 33-35, the panel portions are connected together by a fitment 9, and the fitment 9 can include at least two angle portions, such as three metal angle portions 11,12,13 connected together by fasteners such as screws 14 and nuts 15 (see page 2, line 30 through page 3, line 4 and Figures 10 and 11). A first angle portion 11 has vertical slots 18, a second angle portion has horizontal slots 24 and vertical slots 23, and a third angle portion 13 has horizontal slots 25 and round holes 26 (see page 3, lines 5-16). Thus, the fitment 9 can be adjusted so as to adjust the panel portions 7,7 relative to each other in both the vertical and horizontal directions to adjust horizontal gaps between drawers and/or to precisely position the panels in the horizontal direction (see page 3, lines 17-25).

Grounds of Rejection to be Reviewed on Appeal

Claims 27-34 and 46-50 stand rejected as being unpatentable under 35 USC 103(a) over NZ 507687 (the “Murdoch reference”) in view of U.S. Patent No. 3,075,820 (the “Humphrey reference”) and U.S. Patent No. 4,090,753 (the “Rock reference”); and rejected claims 40-45 as being unpatentable over the Murdoch reference, the Humphrey reference, the Rock reference and further in view of the AT 404664 (the “AT ‘664 reference”). The Examiner also rejected claim 35 under 35 USC 112, second paragraph, as being indefinite.

Argument

A) Prior Art Rejections

Independent Claim 27 is Patentable Over the Murdoch Reference in View of the Humphrey Reference and the Rock Reference

Independent claim 27 is directed to a drawer that comprises two drawer frame members, a rear wall, a drawer bottom, and a front facing panel *adjustably attached* to the drawer frame members. The front facing panel includes at least two panel portions *adjustable relative to one another* and arranged so that the front facing panel is angled inwardly. Because the front facing panel includes at least two panel portions that are *adjustable relative to one another*, the horizontal gaps between adjacent drawers can be precisely adjusted as desired, and interference with adjacent drawers can be avoided (see detail section of Figure 1).

The Examiner asserted that the combination of the Murdoch reference, the Humphrey reference, and the Rock reference at least suggests all of the elements recited in independent claim 27. However, because there is no support for the Examiner's position, it is submitted that the Examiner's prior art rejection of independent claim 27 is clearly improper.

The Murdoch reference teaches a drawer that matches the corner profile of a cabinet. As illustrated in Figure 3, the drawer includes two drawer frame members 8, 9, a rear wall 7 attached to the drawer frame members 8, 9, a drawer bottom 5 between the drawer frame members 8, 9, and a front facing panel 10. However, as acknowledged by the Examiner at the bottom of page 3 of the final Office Action of December 18, 2006, the Murdoch reference does not disclose, and in fact does not even suggest, a front facing panel that is adjustably attached to the drawer frame members 8, 9, or a front facing panel that includes at least two panel portions adjustable relative to one another.

Nonetheless, on page 4 of the final Office Action, the Examiner noted that the Humphrey reference discloses a rotatable drawer cabinet, and asserted that the Humphrey reference would motivate one of ordinary skill in the art to modify the Murdoch reference to provide a front facing panel adjustably attached to drawer frame members, in which the front facing panel includes panel portions adjustable relative to one another. In this regard, the Examiner referred to the drawer 12 illustrated in Figure 4 and having a walled joint structure illustrated in Figure 9.

As explained below, however, the Examiner's interpretation of the Humphrey reference is incorrect.

With respect to the claim limitation requiring that the panel portions of a front facing panel are adjustable relative to one another, the Examiner asserted that the Humphrey reference teaches a front facing panel that includes two panel portions 78, 80 (radial walls), as illustrated in Figures 4 and 9, and asserted that the panel portions 78, 80 are adjustable relative to one another. However, the Applicant respectfully disagrees. As noted above, Figure 9 illustrates the joint between radial walls 78 and 80 of drawer 12. Specifically, as explained in column 4, lines 29-31 of the Humphrey reference, the bearing member 50 includes flange portions 52, 54, and these flange portions are screwed to the joint between wall 78 and wall 80. There is absolutely no teaching or suggestion in the Humphrey reference that the radial walls 78, 80 are adjustable relative to each other. In fact, as illustrated by the diagonal line between radial walls 78,80 in Figure 9, the Humphrey reference teaches that the inner ends of the radial walls 78, 80 are mitered to form a right angle corner reinforced by the triangular block 82 (see column 4, lines 19-21). Thus, rather than allowing adjustment between the walls 78, 80 as asserted by the Examiner, the miter joint arrangement between wall 78 and wall 80 requires that the walls be fitted to each other in a precise and exact manner. Furthermore, the presence of screws 88 attaching the bearing member 50 to the walls 78, 80, and the presence of the block 82 will further prevent any adjustment of the walls 78, 80, and will require precise alignment of the radial walls 78, 80. Finally, as explained in column 4, lines 26-28, slot 85 is formed in wall 78 to receive divider member 86, while slot 83 is formed in wall 80 to receive divider member 84 (see Figure 9). Thus, the slots 83, 85 and the arrangement of the divider members 84, 86 within the slots 83, 85, respectively, also prevent adjustment of the walls 78, 80 relative to one another, and instead require that the walls 78, 80 be precisely aligned in an exact position relative to each other. Consequently, it is submitted that the Humphrey reference does not disclose or even suggest a front facing panel that includes at least two panel portions adjustable to one another.

The Examiner also asserted that the front facing panel (i.e., radial walls 78, 80) of the Humphrey reference is adjustably attached to drawer frame members (i.e., circumferential wall 87) via connectors 26. However, there is no explicit teaching that the radial walls 78,80 are adjustable with respect to the circumferential wall 87. In this regard, column 2, line 69 through

column 3, line 5 of the Humphrey reference teaches that extruded connectors 26 are used to connect the radial walls (e.g., walls 78, 80) to a circumferential side wall (e.g., circumferential side wall 87), as illustrated in Figure 4. Each connector 26 has a channel 28 with a rib 29 for receiving the circumferential side wall (see Figure 5), and the rib 29 provides “a good grip” on the side wall. Furthermore, each extruded connector 26 also includes a channel 30 for receiving an end of the radial side wall, and the channel 30 has an inturned flange 32 for “fixing the margin of the radial panel solidly in the channel.” In other words, the Humphrey reference simply teaches that the extruded connectors 26 provide a “good grip” on a side wall and are also “fixed solidly” to the radial wall. Thus, not only does the Humphrey reference not explicitly teach a front facing panel adjustably attached to drawer frame members, but the Humphrey reference does not even *suggest* that the extruded connectors 26 adjustably attach the radial walls 78, 80 (i.e., panel portions of the front facing panel) to the circumferential side wall 87 (i.e., drawer frame members).

The Rock reference teaches a fastening device including a retaining part 4 and a supporting part 5. The Rock reference generally teaches that these components can be used, for example, to adjust the position of a one-piece front panel 14 to a bottom board 1 of drawer (see Figure 6 and column 2, line 65 through column 3, line 8). Thus, the Rock reference simply teaches the very general idea of attaching a one piece front panel to a drawer in an adjustable manner. However, the Rock reference also does not disclose or even suggest a front facing panel adjustably attached to drawer frame members, or a front facing panel including at least two panel portions adjustable relative to one another as recited in independent claim 27. Therefore, one of ordinary skill in the art would also not be motivated by the Rock reference to modify the Murdoch reference so as to obtain the invention recited in independent claim 27.

As noted above, neither the Humphrey reference nor the Rock reference provides any suggestion or teaching that would motivate one of ordinary skill in the art to modify the Murdoch reference so as to obtain a drawer including a front facing panel adjustably attached to drawer frame members, in which the front facing panel includes panel portions adjustable relative to one another, as recited in independent claim 27. Thus, the basis for the Examiner’s prior art rejections are not clear. In this regard, it is well established that the question of motivation cannot be resolved on subjective belief and unknown authority. See *In re Sang Su Lee*, 277 F.3d

1338, 61USPQ2d 1430 (Fed. Cir. 2002). It is further well established that when attempting to determine whether one of ordinary skill in the art would be motivated by the references to obtain the claimed invention, it is improper to simply use “that which the inventor taught against its teacher.” *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983). Instead, the determination whether to modify or combine the references must be made on objective evidence of record without hindsight analysis. See *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (“Our case law makes clear that the best defense against the subtle but powerful attraction of hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.”). Because the combination of the Murdoch reference, the Humphrey reference, and the Rock reference does not even suggest all of the elements recited in independent claim 27, the Examiner’s prior art rejection of claim 27 appears to be based only on the teachings set forth in the present application - i.e., improper hindsight.

Although the Examiner did not apply the AT’664 reference against independent claim 27, it is noted that this reference also does not teach or suggest a drawer including a front facing panel adjustably attached to drawer frame members, in which the front facing panel includes panel portions adjustable relative to one another. Accordingly, because the Murdoch reference, the Humphrey reference, the Rock reference, and the AT ‘664 reference do not teach or suggest all of the elements recited in claim 27, it is respectfully submitted that independent claim 27 and the claims that depend therefrom are clearly patentable over the prior art of record.

Dependent Claims 29 and 30 are Further Patentable Over the Murdoch Reference in View of the Humphrey Reference and the Rock Reference

In addition to the features recited in independent claim 27, both dependent claim 29 and dependent claim 30 recite that the panel portions are *adjustable in the horizontal direction*. In particular, dependent claim 29 recites that the panel portions of the front facing panel are adjustable in the horizontal direction relative to the draw frame members, while dependent claim 30 recites that the panel portions of the front facing panel are adjustable in the horizontal direction relative to each other. As noted above, the Examiner asserted that the Humphrey reference teaches panel portions of a front facing panel that are adjustable relative to drawer

frame members and relative to each other. However, as noted above with respect to independent claim 27, the Humphrey reference does not teach these features. In fact, the formation of the miter joint, the arrangement of the flanges 52, 54 of the bearing member 50, and the arrangement of the dividers 84, 86 within the slots 83, 85 of the walls 80, 78 will particularly *prevent* adjustment of the panel portions in the *horizontal* direction. Thus, in addition to the distinguishing features discussed above with respect to independent claim 27, it is submitted that dependent claims 29 and 30 recite further distinguishing features that are clearly not even suggested in the combination of the Murdoch reference, the Humphrey reference, and the Rock reference. Accordingly, it is submitted that dependent claims 29 and 30 are further patentable over the prior art of record.

Dependent Claims 40-45 are Patentable Over the Murdoch Reference in View of the Humphrey Reference, the Rock Reference and the AT '664 reference

Dependent claims 40-45 each depend from independent claim 27. As noted above, independent claim 27 is patentable over the prior art as applied by the Examiner. Because dependent claims 40-45 include all of the limitations of independent claim 27 by definition, it is submitted that dependent claims 40-45 are also patentable over the prior art as applied by the Examiner.

B) Formal Rejections

Claim 35 is not Indefinite Under Section 112

The Examiner rejected dependent claim 35 as being indefinite, presumably because the Examiner believes that the subject matter of dependent claim 35 is inconsistent with the subject matter of base dependent claim 34 in some manner. In this regard, the Examiner asserted that because “claim 34 recited ‘at least two angle portions’ which is *just* two angle portions, the recitation in claim 35 of a total of three angle portions renders the claimed [sic] indefinite” (emphasis added). However, it is submitted that there is nothing indefinite or unclear with respect to claim 35, and that claim 35 properly further defines the invention of claim 34.

Dependent claim 34 presently reads “said fitment includes *at least* two angle portions screwed to each other” (emphasis added). Thus, claim 34 is not limited to only, or “just”, two

angle portions. Instead, the ordinary meaning of claim 34 is broad enough to cover embodiments with two angle portions, three angle portions, or twenty-two angle portions. Claim 35 simply recites a proper further description of three of the *at least* two angle portions previously set forth in claim 34, and the language of claim 35 is clearly consistent with base claim 34 while particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his invention. As a result, it is submitted that claim 35 is not indefinite and fully complies with all requirements of 35 USC 112, and the Examiner's formal rejection of claim 35 should be reversed.

Conclusion

As noted above, the combination of the Murdoch reference, the Humphrey reference, the Rock reference, and the AT '664 reference does not disclose or even suggest all of the features recited in independent claim 27. Moreover, dependent claim 35 is not indefinite. Thus, it is respectfully submitted that independent claim 27 and the claims that depend therefrom are clearly patentable over the prior art of record and comply with all formal requirements. Consequently, the Board of Appeals is respectfully requested to reverse the Examiner's prior art and formal rejections set forth in the final Office Action of December 18, 2006.

Respectfully submitted,

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September 12, 2007

CLAIMS APPENDIX - Claims on Appeal (Appeal - Application Serial No. 10/766,478)

27. A drawer comprising:
two drawer frame members;
a rear wall attached to said drawer frame members;
a drawer bottom between said drawer frame members; and
a front facing panel adjustably attached to said drawer frame members, said front facing panel including at least two panel portions adjustable relative to one another and arranged so that said front facing panel is angled inwardly.

28. The drawer of claim 27, wherein said front facing panel is angled inwardly such that said panel portions form a right angle to each other.

29. The drawer of claim 27, wherein said panel portions are adjustable in the horizontal direction relative to said drawer frame members.

30. The drawer of claim 27, wherein said panel portions are adjustable in the horizontal direction relative to each other.

31. The drawer of claim 27, wherein said panel portions are adjustable in the vertical direction relative to said drawer frame members.

32. The drawer of claim 27, wherein said panel portions are adjustable in the vertical direction relative to each other.

33. The drawer of claim 27, wherein said panel portions are connected together by a fitment.

34. The drawer of claim 33, wherein said fitment includes at least two angle portions screwed to each other.

35. The drawer of claim 34, wherein a first one of said angle portions has vertical slots, a second one of said angle portions has horizontal and vertical slots, and a third one of said angle portions has horizontal slots and round holes.

40. The drawer of claim 27, further comprising holding members mounted to said panel portions and coupled to spring-loaded arresting members in said drawer frame members.

41. The drawer of claim 40, wherein said holding members are fixed to triangular-shaped adaptor portions screwed directly to said panel portions.

42. The drawer of claim 27, further comprising an inwardly-angled front base panel having openings, and holding members fixed to said front facing panel project through said openings so as to attach said front facing panel to said front base panel.

43. The drawer of claim 42, wherein said holding members are coupled to anchor members fitted to said front base panel.

44. The drawer of claim 43, wherein said holding members are screwed to said anchor members.

45. The drawer of claim 44, wherein said anchor members have holes through which fixing screws project, wherein said fixing screws are adjustable within said holes in the radial direction.

46. The drawer of claim 27, wherein said rear wall is angled outwardly from said front facing panel.

47. The drawer of claim 46, wherein said rear wall includes two rear panel portions connected together.

48. The drawer of claim 47, wherein said rear panel portions form a right angle to each other.

49. The drawer of claim 47, wherein said rear panel portions are fixed to said drawer frame members by separate holding members.

50. The drawer of claim 46, wherein said rear wall is fixed to said drawer frame members by separate holding members.

EVIDENCE APPENDIX (Appeal - Application Serial No. 10/766,478)

No evidence has been submitted and relied upon by the Appellant.

RELATED PROCEEDINGS APPENDIX (Appeal - Application Serial No. 10/766,478)

As noted above, there are no known related appeals, interferences, or judicial proceedings.